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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/927,163
Filing Date: August 09, 2001
Appellant(s): WILKES, JOHN

Derek J. Westberg (Reg. No. 40,872)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/11/2008 appealing from the Office action mailed 07/10/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct except for the the withdrawn rejection.

WITHDRAWN REJECTIONS

The 35 USC § 101 grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

PUB. NO.: US	ALVAREZ	12-2001
2001/0054131 A1		
US 5,813,009	JOHNSON	09-1998
PUB. NO.: US	SATHYANARAYAN	10-2002
2002/0152194 A1		

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 15, 22, 25, 30 and 32-33 rejected under 35 U.S.C. 102(e) as being anticipated by Pub. No.: US 20010054131 A1 to Alvarez, II et al. (hereinafter ALVAREZ).

With respect to claim 15, ALVAREZ teaches an article of manufacture comprising a computer usable medium having data stored thereon and having computer readable

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program code stored thereon, the computer readable program code including a first routine for accessing the data in response to a request for access to the data in an archival format and a second routine for accessing the data in response to a request for access to the data in a non-archival format (system memory storing two software modules, routines, or algorithms with program codes or instructions: compressed format and non-compressed or decompressed format; a memory storing two software module or routine for accessing data such as compressed and decompressed software algorithms or program codes for archive files or data stored on archive storage such as tapes: page 1, paragraph 0010, lines 13-19; page 2, 0015, lines 4-10; page 20, 0288, lines 1-6 and page 30, 0422, lines 16-20 and also see page 38, paragraphs 0538-0538).

With respect to claim 22, ALVAREZ teaches an article of manufacture comprising a computer usable medium having data stored thereon and having computer readable program code stored thereon, the computer readable program code including a first routine for accessing the data in response to a request from a first target system type and a second routine for accessing the data in response to a request from a second target system type (System memory storing two software modules, routines, or algorithms with program codes or instructions: compressed format and non-compressed or decompressed format; the first type of data is compressed data and the second type of data is decompressed data; the software algorithms or program codes stored on the memory in order to do these two kinds of accessing archived files or data stored on the archived storage such as tapes: page 1, paragraph 0010, lines 13-19; page 2, 0015,

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lines 4-10; page 20, 0288, lines 1-6 and page 30, 0422, lines 16-20; also, page 38, paragraphs 0538-0539).

With respect to claim 25, ALVAREZ teaches an article of manufacture comprising a computer usable data storage medium having data stored thereon and having computer readable program code stored on secondary storage associated with the data storage medium, the computer readable program code including a first routine for accessing the data in response to a request of a first request type and a second routine for accessing the data in response to a second request type, wherein the secondary storage is built into a cartridge for the data storage medium (System memory storing two software modules, routines, or algorithms with program codes or instructions: compressed format and non-compressed or decompressed format; a memory storing two software module or routine for accessing data such as compressed and decompressed software algorithms or program codes and accessing files or data stored on the archive storage: page 1, paragraph 0010, lines 13-19; page 2, 0015, lines 4-10; page 20, 0288, lines 1-6 and page 30, 0422, lines 16-20 and tape devices for read/write data: page 38, paragraphs 0536-0539).

With respect to claim 30, ALVAREZ teaches wherein data storage medium is removable (data files and software programs are stored on the storage medium such as removable DVD, CD and floppy disk (para 0006, 0023, 0053, 0154, and 0525).

With respect to claim 32, ALVAREZ teaches wherein data storage medium is removable (data files and software programs are stored on the storage medium such as removable DVD, CD and floppy disk (para 0006, 0023, 0053, 0154, and 0525).

With respect to claim 33, ALVAREZ teaches wherein data storage medium is removable (data files and software programs are stored on the storage medium such as removable DVD, CD and floppy disk (para 0006, 0023, 0053, 0154, and 0525).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1, 6-12, 16-19, 20-21, 23 and 28 rejected under 35 U.S.C. 103(a) as being unpatentable over Pub. No.: US 2001/0054131 A1 to Alvarez, II et al. (hereinafter ALVAREZ) in view of US Patent No.: 5,813,009 issued to Johnson et al. (hereinafter JOHNSON).

With respect to claim 1, ALVAREZ teaches a method of retrieving data from a data storage medium (retrieving data stored on the archive storage: page 2, 0023, lines 10-15; page 26, 0375, lines 1-10; 0380, lines 1-5 and page 27, 0386, lines 1-3), comprising:

loading a program from the data storage medium into a computer system, the program including at least a first routine for responding to a first request type for access to data stored on the data storage medium and a second routine for responding to a

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second request type for access to the same data stored on the data storage medium, the data being stored in accordance with an archival format (system memory storing two software modules, routines, or algorithms with program codes or instructions: compressed format and non-compressed or decompressed format; the software program stored on the memory having two program codes or modules or routine to process the archived file or data stored on the archive storage such as tape: page 1, paragraph 0010, lines 13-19; page 2, 0015, lines 4-10; page 20, 0288, lines 1-6 and page 30, 0422, lines 16-20; also, page 38, paragraphs 0538-0539);

receiving a request for access to data stored on the data storage medium (the requesting unit receiving the requests for accessing the data or files stored on the archive storage: page 3, 0026, lines 1-14, 0029, lines 1-10 and 0031, lines 3-12); and

determining whether the request is of the first type or the second type (compressing or decompressing data: figs. 6-7; page 12, 0187, lines 1-30 and 0188, lines 1-25).

ALVAREZ teaches retrieving or accessing file or data stored on the archive storage via a program code or software routines stored on a storage medium such as memory with two different software algorithms or routine for compressing and decompressing file or data and receiving request to access the data or file and determining the type of access such as compressing or decompressing data or file. ALVAREZ does not explicitly teach calling the first routine for accessing the data when

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the request is of the first type and calling the second routine for accessing the data when the request is of the second type; and presenting the requested data as claimed.

However, JOHNSON teaches calling the utility to access the data and displaying the data (col. 20, lines 1-10 and col. 28, lines 31-40; col. 19, lines 50-67).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of ALVAREZ with the teachings of JOHNSON. One having ordinary skill in the art would have found it motivated to utilize the use of calling the utility to access the data and presenting the result of the data as disclosed (JOHNSON's col. 20, lines 1-10 and col. 1, lines 50-67), into the system of ALVAREZ for the purpose of retrieving of data of the archival of documents and outputting the data by presenting to the user (JOHNSON's col. 1, lines 5-10, and 50-55).

With respect to claims 6 and 8-11, ALVAREZ teaches a method of retrieving data from a data storage medium as disclosed in claim 1.

ALVAREZ teaches retrieving or accessing file or data stored on the archive storage via a program code or software routines stored on a storage medium such as memory with two different software algorithms or routine for compressing and decompressing file or data and receiving request to access the data or file and determining the type of access such as compressing or decompressing data or file. ALVAREZ does not explicitly teach wherein the first request type includes a request for one or more files from a file system; wherein the second request type includes a request for one or more logical volumes; wherein the second request type

includes a request for an image copy of the data; wherein the first request type is by a first target system type and the second request type is by a second target system type; and wherein said presenting the requested data includes formatting the data in accordance with the target system type as claimed.

However, JOHNSON teaches searching in response to queries or requests for information, data formats and file directory or file structure of files stored in the system (col. 7, lines 6-67, col. 8, lines 1-35; col. 11, lines 22-24 and col. 14, lines 71-15); volumes (col. 15, lines 30-35 and col. 16, lines 16-22); image copy of data and requesting type to the system (col. 18, lines 53-62 and col. 20, lines 36-45 and col. 28, lines 5-20).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of ALVAREZ with the teachings of JOHNSON. One having ordinary skill in the art would have found it motivated to utilize the use of calling the utility to access the data and presenting the result of the data as disclosed (JOHNSON's col. 20, lines 1-10 and col. 1, lines 50-67), into the system of ALVAREZ for the purpose of retrieving of data of the archival of documents and outputting the data by presenting to the user (JOHNSON's col. 1, lines 5-10, and 50-55).

With respect to claim 7, ALVAREZ teaches wherein said presenting includes reformatting all of the data as a file structure (page 2, 0023, lines 1-15; page 3, 0026-0027; page 10, 0154, lines 1-30 and 0155).

With respect to claim 12, ALVAREZ teaches wherein the program includes information about the data (page 8, 0136, lines 1-10; 0137, lines 1-8 and page 10, 0154m4, lines 1-18).

With respect to claims 16-19 and 21, ALVAREZ teaches an article of manufacture as disclosed in claim 15.

ALVAREZ teaches retrieving or accessing file or data stored on the archive storage via a program code or software routines stored on a storage medium such as memory with two different software algorithms or routine for compressing and decompressing file or data and receiving request to access the data or file and determining the type of access such as compressing or decompressing data or file. ALVAREZ does not explicitly teach wherein said second routine supports accessing the data as a logical volume; wherein said first routine supports accessing the data as an image copy; wherein the second routine supports accessing all of the data as a file structure; wherein the second routine supports accessing the data as at least one specified file; and wherein the information about the data includes a file system directory. e as claimed.

However, JOHNSON teaches file directory or file structure of files stored in the system (col. 11, lines 22-24 and col. 14, lines 71-15); volumes (col. 15, lines 30-35 and col. 16, lines 16-22); image copy of data and requesting type to the system (col. 18, lines 53-62 and col. 20, lines 36-45 and col. 28, lines 5-20).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of ALVAREZ with the

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teachings of JOHNSON. One having ordinary skill in the art would have found it motivated to utilize the use of calling the utility to access the data and presenting the result of the data as disclosed (JOHNSON's col. 20, lines 1-10 and col. 1, lines 50-67), into the system of ALVAREZ for the purpose of retrieving of data of the archival of documents and outputting the data by presenting to the user (JOHNSON's col. 1, lines 5-10, and 50-55).

With respect to claim 20, ALVAREZ teaches wherein the program code includes information about the data (page 8, 0136, lines 1-10; 0137, lines 1-8 and page 10, 0154m4, lines 1-18).

With respect to claim 23, ALVAREZ teaches an article of manufacture as disclosed in claim 22.

ALVAREZ teaches retrieving or accessing file or data stored on the archive storage via a program code or software routines stored on a storage medium such as memory with two different software algorithms or routine for compressing and decompressing file or data and receiving request to access the data or file and determining the type of access such as compressing or decompressing data or file. ALVAREZ does not explicitly teach wherein said program presents the requested data formatted in accordance with the target system type as claimed.

However, JOHNSON teaches file directory or file structure of files stored in the system and image copy of data and requesting type to the system (col. 11, lines 22-24 and col. 14, lines 71-15; col. 18, lines 53-62 and col. 20, lines 36-45 and col. 28, lines 5-20).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of ALVAREZ with the teachings of JOHNSON. One having ordinary skill in the art would have found it motivated to utilize the use of calling the utility to access the data and presenting the result of the data as disclosed (JOHNSON's col. 20, lines 1-10 and col. 1, lines 50-67), into the system of ALVAREZ for the purpose of retrieving of data of the archival of documents and outputting the data by presenting to the user (JOHNSON's col. 1, lines 5-10, and 50-55).

With respect to claim 28, ALVAREZ teaches wherein data storage medium is removable (data files and software programs are stored on the storage medium such as removable DVD, CD and floppy disk (para 0006, 0023, 0053, 0154, and 0525).

5. Claims 2-5, 13-14, 24, 27, 29 and 31 rejected under 35 U.S.C. 103(a) as being unpatentable over Pub. No.: US 2001/0054131 A1 to Alvarez, II et al. (hereinafter ALVAREZ) in view of US Patent No.: 5,813,009 issued to Johnson et al. (hereinafter JOHNSON) and further in view of Pub. No.: US 2002/0152194 A1 to SATHYANARAYAN.

With respect to claims 2-5, ALVAREZ in view of JOHNSON discloses a method of retrieving data from a data storage medium as discussed in claim 1.

ALVAREZ and JOHNSON disclose substantially the invention as claimed.

ALVAREZ and JOHNSON do not explicitly teach wherein the first routine implements a first set of operations and the second routine implements a second set of operations; wherein the first set of operations includes file system operations; wherein the second set of operations includes standardized archival operations; and wherein the second set of operations includes operations selected from CPIO and TAR as claimed.

However, SATHYANARAYAN teaches creation or generation, copying, retrieving or extracting and archival utility and CPIO and TAR operations (page 1, 0001, lines 1-5; 0009, lines 1-17; page 2, 0018, lines 1-11; 0024-0025; page 3, 0032, lines 1-18; 0033, lines 1-8; 0034, lines 1-8).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of ALVAREZ in view of JOHNSON with the teachings of SATHYANARAYAN by incorporating the use of file system operations such as retrieving, extracting or copying and archiving operations such as CPIO and TAR operations as disclosed (SATHYANARAYAN's paragraphs 0009, 0018, 0032-0034), into the system of ALVAREZ for the purpose of having archiving utilities for the Unix operating system such as CPIO and TAR and file system operations such as reading, writing and restoring operations, thereby, speeding up archival operations and a copy process is also speeded up by transferring data from /to data storage media and to minimize problems caused by the different types of storage devices having different data storage formats (SATHYANARAYAN's page 1, paragraphs 0003-0007).

With respect to claims 13-14, ALVAREZ in view of JOHNSON discloses a method of retrieving data from a data storage medium as discussed in claim 1.

ALVAREZ and JOHNSON disclose substantially the invention as claimed.

ALVAREZ and JOHNSON do not explicitly teach wherein the information about the data includes a file system directory; and wherein the data is stored on the data storage medium as raw data blocks as claimed.

However, SATHYANARAYAN teaches file directories (abstract, page 2, 0018, lines 1-11, 0024, lines 1-10 and 0025, lines 1-9; also, see page 3, 0030, page 4, 0049).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of ALVAREZ in view of JOHNSON with the teachings of SATHYANARAYAN by incorporating the use of file system operations such as retrieving, extracting or copying and archiving operations such as CPIO and TAR operations as disclosed (SATHYANARAYAN's paragraphs 0009, 0018, 0032-0034), into the system of ALVAREZ for the purpose of having archiving utilities for the Unix operating system such as CPIO and TAR and file system operations such as reading, writing and restoring operations, thereby, speeding up archival operations and a copy process is also speeded up by transferring data from /to data storage media and to minimize problems caused by the different types of storage devices having different data storage formats (SATHYANARAYAN's page 1, paragraphs 0003-0007).

With respect to claims 24 and 31, ALVAREZ in view of JOHNSON discloses an article of manufacture as discussed in claim 22.

ALVAREZ and JOHNSON disclose substantially the invention as claimed.

ALVAREZ and JOHNSON do not explicitly teach wherein the data is stored on the data storage medium as raw data blocks and wherein the data is stored in accordance with an archival format as claimed.

However, SATHYANARAYAN teaches file directories (abstract, page 2, 0018, lines 1-11, 0024, lines 1-10 and 0025, lines 1-9; also, see page 3, 0030, page 4, 0049) and archival format (page 1, paragraphs 0005, lines 9-10 and 0007, lines 3-7).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of ALVAREZ in view of JOHNSON with the teachings of SATHYANARAYAN by incorporating the use of file system operations such as retrieving, extracting or copying and archiving operations such as CPIO and TAR operations as disclosed (SATHYANARAYAN's paragraphs 0009, 0018, 0032-0034), into the system of ALVAREZ for the purpose of having archiving utilities for the Unix operating system such as CPIO and TAR and file system operations such as reading, writing and restoring operations, thereby, speeding up archival operations and a copy process is also speeded up by transferring data from /to data storage media and to minimize problems caused by the different types of storage devices having different data storage formats (SATHYANARAYAN's page 1, paragraphs 0003-0007).

With respect to claim 27, ALVAREZ in view of JOHNSON discloses an article of manufacture as discussed in claim 25.

ALVAREZ and JOHNSON disclose substantially the invention as claimed.

ALVAREZ and JOHNSON do not explicitly teach wherein the data is stored on the data storage medium as raw data blocks as claimed.

However, SATHYANARAYAN teaches file directories (abstract, page 2, 0018, lines 1-11, 0024, lines 1-10 and 0025, lines 1-9; also, see page 3, 0030, page 4, 0049).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of ALVAREZ in view of JOHNSON with the teachings of SATHYANARAYAN by incorporating the use of file system operations such as retrieving, extracting or copying and archiving operations such as CPIO and TAR operations as disclosed (SATHYANARAYAN's paragraphs 0009, 0018, 0032-0034), into the system of ALVAREZ for the purpose of having archiving utilities for the Unix operating system such as CPIO and TAR and file system operations such as reading, writing and restoring operations, thereby, speeding up archival operations and a copy process is also speeded up by transferring data from /to data storage media and to minimize problems caused by the different types of storage devices having different data storage formats (SATHYANARAYAN's page 1, paragraphs 0003-0007).

With respect to claim 29, ALVAREZ in view of JOHNSON discloses an article of manufacture as discussed in claim 15.

ALVAREZ and JOHNSON disclose substantially the invention as claimed.

ALVAREZ and JOHNSON do not explicitly teach wherein the data is stored on the data storage medium as raw data blocks as claimed.

However, SATHYANARAYAN teaches file directories (abstract, page 2, 0018, lines 1-11, 0024, lines 1-10 and 0025, lines 1-9; also, see page 3, 0030, page 4, 0049).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the teachings of ALVAREZ in view of JOHNSON with the teachings of SATHYANARAYAN by incorporating the use of file system operations such as retrieving, extracting or copying and archiving operations such as CPIO and TAR operations as disclosed (SATHYANARAYAN's paragraphs 0009, 0018, 0032-0034), into the system of ALVAREZ for the purpose of having archiving utilities for the Unix operating system such as CPIO and TAR and file system operations such as reading, writing and restoring operations, thereby, speeding up archival operations and a copy process is also speeded up by transferring data from /to data storage media and to minimize problems caused by the different types of storage devices having different data storage formats (SATHYANARAYAN's page 1, paragraphs 0003-0007).

(10) Response to Argument

Argument:

Appellant argued that, “Alvarez does not disclose such an arrangement as is recited by Appellant’s claims 15, 22 and 25.” (pages 24, starting lines 6 thru page 31, lines 1-4, in the Appeal Brief).

Response:

In response to Appellant’s arguments, Examiner respectfully disagrees as ALVAREZ teaches system memory storing two software modules, routines, or algorithms with program codes or instructions: compressed format and non-compressed or decompressed format; for archive files or data stored on archive storage such as tapes: page 1, paragraph 0010, lines 13-19; page 2, 0015, lines 4-10; page 20, 0288, lines 1-6 and page 30, 0422, lines 16-20 and also see page 38, paragraphs 0538-0538). They are also interpreted as archived and non-archived format and are stored on the storage medium such as removable DVD, CD and floppy disk (para 0006, 0023, 0053, 0154, and 0525).

Argument:

Appellant argued that, “Alvarez does not disclose “wherein the data storage medium is removable” such an arrangement as is recited by Appellant’s claims 30 and 32-33.” (pages 31, starting lines 17 thru page 33, ending line 7, in the Appeal Brief).

Response:

In response to Appellant's arguments, Examiner respectfully disagrees as ALVAREZ teaches data files and software programs are stored on the storage medium such as removable DVD, CD and floppy disk (para 0006, 0023, 0053, 0154, and 0525).

Argument:

Appellant argued that, "the Office action mailed does not provide a prima facie case for obviousness." (page 33, starting line 8 thru page 37, ending at line 15, in the Appeal Brief).

Response:

Examiner respectfully disagrees as argued.

In response to applicant's argument that there is no producing a prima facie of obviousness and no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teachings, suggestions, or motivations to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, Alvarez, II et al. (Pub. No.: US 2001/0054131 A1, hereinafter ALVAREZ) and Johnson et al. (Patent No.: US 5,813,009, hereinafter JOHNSON) are from the same field of endeavor and both are directed to having software programs for compression and decompression: two different routines with two different data format.

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One having ordinary skill in the art would have found it motivated to combine the teachings of ALVAREZ and JOHNSON because that would provide ALVAREZ's system the enhanced capability of purpose of retrieving of data of the archival of documents and outputting the data by presenting to the user (JOHNSON's col. 1, lines 5-10, and 50-55). Moreover, the examiner kindly submits that the applicants misread the applicable references used in the last office action. However, when read and analyzed in light the specification, the invention as claimed does not support applicant's assertions. Actually, applicants are interpreting the claims very narrow without considering the broad teaching of the references used in the rejections. Additionally, it is important to note that the examiner interpretation of the claims, wherein, the examiner explicitly stated passages in the cited references which were not even addressed. The aforementioned assertion wherein all the limitations are not taught or suggested by the prior of record, was unsupported by objective factual evidence and was not found to be substantial evidentiary value. The examiner has provided in the last office action, a convincing one of reasoning as to why the artisan would have found the claimed invention to have been obvious in light of the teachings of the cited references.

Applicants are reminded that 37 CFR 1.111(b) states, a general allegation that the claims define a patentable invention without specifically printing out how the language of the claims patentably distinguishes them from the references does not comply with the requirements of this section. Therefore, the applicants have failed to provided prima facie evidence how the language of the claims patentably distinguished them from the cited references. Hence, the applicants' assertions are just mere allegation with no

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supported fact. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Argument:

Appellant argued that, "neither Alvarez nor Johnson appears to teach or suggest that a program for accessing data is loaded from the same data storage medium that stores the data to be accessed." (page 35, lines 14-16, in the Appeal Brief).

Response:

In response to Appellant's arguments, Examiner respectfully disagrees as ALVAREZ teaches software programs and data file are generally stored on the hard disk. If a software compression application is being used, data may be stored on the hard disk in compressed format (para 0136-0137). System memory storing two software modules, routines, or algorithms with program codes or instructions: compressed format and non-compressed or decompressed format; for archive files or data stored on archive storage such as tapes: page 1, paragraph 0010, lines 13-19; page 2, 0015, lines 4-10; page 20, 0288, lines 1-6 and page 30, 0422, lines 16-20 and

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also see page 38, paragraphs 0538-0538). They are also interpreted as archived and non-archived format and are stored on the storage medium such as removable DVD, CD and floppy disk (para 0006, 0023, 0053, 0154, and 0525).

Argument:

Appellant argued that, "Johnson does not disclose that such a request type includes a request for one or more files form a file system." (page 38 thru page 42, ending at line 9, in the Appeal Brief).

Response:

In response to Appellant's arguments, Examiner respectfully disagrees as JOHNSON teaches searching in response to queries or requests for information, data formats and file directory or file structure of files stored in the system (col. 7, lines 6-67, col. 8, lines 1-35; col. 11, lines 22-24 and col. 14, lines 71-15); volumes (col. 15, lines 30-35 and col. 16, lines 16-22); image copy of data and requesting type to the system (col. 18, lines 53-62 and col. 20, lines 36-45 and col. 28, lines 5-20).

Argument:

Appellant argued that, "Sathyanarayan does not disclose file system operations." (page 43, staring line 4 thru page 45, in the Appeal Brief).

Response:

In response to Appellant's arguments, Examiner respectfully disagrees as SATHYANARAYAN teaches file system operations such as creation or generation,

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copying, retrieving or extracting of file directories and archival utility and CPIO and TAR operations (para 0001, 0009, 0018, 0024-0025; 0030 and 0032-0038); file directories (abstract, para 0018, 0024, 0025, also, see para 0030 and 0049) and archival format (para 0005 and 0007).

For the above reasons, it is believed that the rejections should be sustained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Respectfully submitted,

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Patent Examiner, Art Unit 2162

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